

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JOHN DOE,

Plaintiff,

-against-

POLY PREP COUNTRY DAY SCHOOL,

Defendant.

Index No.: _____

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney, within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue is based on New York Civil Practice Law and Rules § 503(a) – Defendant is located in Kings County and Kings County is where a substantial part of the events giving rise to the claim occurred.

Dated: November 19, 2019
New York, New York

LEWIS BAACH KAUFMANN MIDDLEMISS PLLC

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JOHN DOE,

Plaintiff,

-against-

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COMPLAINTJury Trial Demanded

POLY PREP COUNTRY DAY SCHOOL,

Defendant.

X

Plaintiff John Doe (“Doe”), by and through his attorneys, Lewis Baach Kaufmann Middlemiss PLLC, for his Complaint (“the Complaint”) against defendant Poly Prep Country Day School (“Poly”) alleges as follows:

PRELIMINARY STATEMENT

1. This is a revival action brought pursuant to the New York Child Victims Act (the “CVA”), CPLR § 214(g). The CVA opened a historic one-year time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims.
2. This case is about an adolescent boy of 15, now a man past 60, who was preyed on by a long-time humanities and Latin teacher at Poly, at a difficult time in his life. That predation not only harmed and traumatized Doe as an adolescent, but, as is so often the case, had a profound ongoing impact on his mental health and functioning throughout his adult life.
3. This case is equally about the many adults in positions of power at Poly who were aware of, tolerated and covered up rampant sexual abuse at the school and who retaliated against students who were aware of such conduct, including Doe. Doe was a player on the football team coached by the notorious serial sexual predator, Phillip Foglietta (“Foglietta”). Doe witnessed Foglietta’s abuse in plain sight of young boys and was retaliated against by Foglietta, who knew that he could prey on children with impunity. Doe witnessed this abuse and was also close

friends with another student who complained to the Poly Headmaster and was threatened with expulsion. These children, now men, bear the scars of Poly's profound and knowing indifference to their victimization and suffering.

4. The Child Victims Act was enacted to recognize that child sexual abuse often causes a lifetime of confusion, shame and suffering, and frequently remains secret for decades until victims are able to come forward. Doe shared his secret years ago with fellow victims at Poly, when there was no legal avenue for him to compel accountability for his harms and respect for the traumas that stole his boyhood and cast a dark and decisive shadow over his adulthood.

PARTIES

5. Plaintiff John Doe is an individual who resides in the State of New Jersey.

6. Defendant Poly Prep Country Day School is a non-profit educational entity that is located in Kings County, New York.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to Section 7 of Article VI of the Constitution of the State of New York and pursuant to Judiciary Law § 140-b because this is a civil action for, *inter alia*, monetary damages (exclusive of interest and costs) in excess of the jurisdictional maximum of the Civil Court.

8. Venue is proper in this County pursuant to C.P.L.R. § 503(a).

9. This case is timely under the Child Victims Act, N.Y.S.B. 2440 § 214(g), 242 Legis. Sess. (N.Y. 2019).

FACTUAL ALLEGATIONS

10. From approximately 1974 to 1976, Doe was a victim of sexual abuse by John Miller ("Miller"), a long-time humanities and Latin teacher at Poly. Miller was also an ordained

Episcopal priest. Doe was also a member of the football team coached by the serial predatory pedophile Foglietta.

11. Doe was a close friend of James Moe (“Moe”), a member of the football team who had himself reported Foglietta’s behavior to the Poly Headmaster and whose parents complained to the Poly Headmaster about Foglietta’s behavior. The Headmaster, William M. Williams, threatened Moe with expulsion as a troublemaker. Foglietta knew he had been reported to Williams by Moe, knew that Williams was ignoring these credible reports as well as the reports of others, and was extremely hostile to Moe. Doe was targeted for aggressive and hostile action by Foglietta for his close friendship with Moe, his knowledge that Moe had reported Foglietta and that the school was covering this up, and for personally witnessing acts of sexual abuse by Foglietta against other students.

12. On at least two occasions, Doe was present at athletic department facilities where Foglietta was engaged in inappropriate touching of a sexual nature with children in his office. Foglietta not only was preying on children, but was making little or no effort to hide it in the areas of the athletic department. Foglietta gave Doe angry, defiant stares while one boy masturbated him through his trouser pocket which Doe understood to mean, “What the fuck are you going to do about it?” Doe was angry and shocked that boys were being sexually abused, that the sexual abuse was widely known and effectively in plain sight, and that no one in authority was going to do anything about it. He was disgusted and frightened that such behavior was so clearly tolerated and that many boys were so obviously at risk.

13. It was clear to Doe that Foglietta retaliated against him by sabotaging and obstructing his opportunities to participate and succeed in the athletic program. Subordinate

coaches were influenced and directed by Foglietta to disregard Doe or prevent his participation in certain sports. Foglietta punished Doe for knowing about and judging his abusive behavior.

14. Doe knew that Foglietta was a pedophile and Foglietta knew that Doe knew this.

Indeed, this was known to very many students who talked about it frequently. Doe saw Foglietta taking one boy to the dirt floor gym where he locked the door, and Doe and others understood Foglietta was abusing the boy. Doe also saw boys in Foglietta's office in the locker room area, which was known as "the cage." He knew that Foglietta also showered in the nude with boys as young as 10 years old in the lower school shower room.

15. Doe also knew that other coaches and the Assistant Headmaster, the Dean of Students and Director of Athletics were fully aware that Foglietta was sexually preying on students and were covering up for him. Foglietta frequently badmouthed the Headmaster to the football team as inept and ineffectual. Foglietta also spoke to the assembled football team about members of the faculty, calling them "homos" and "fairies." Doe believed that because Foglietta was a successful football coach and an intimidating and dominating presence, no one in the school would take any action to stop this behavior or terminate him. Doe was confused and profoundly troubled and anxious that this behavior continued and that, despite the fact that Foglietta preyed on boys, he was also homophobic. The messages about sexuality and masculinity were profoundly garbled and incoherent to Doe and other young men for whom Foglietta was a principal authority figure.

16. Foglietta knew that Doe was disturbed by his actions and on more than one occasion responded with smug, angry glares, which Doe perceived as daring him to "do something about it." As time progressed during his time at Poly, Doe avoided interaction with Foglietta as Foglietta manifested contempt and hostility toward Doe.

17. Doe was having academic difficulties as further discussed below, and was trying to help his chances of college admission by seeking to play on a college football team. Doe had been named as All New York City Honorable Mention by the New York Daily News, which he thought certainly qualified him to be considered as a college football player, especially at smaller schools. Foglietta flatly refused Doe's requests for films of Doe's play in Poly's games, and also refused to provide a high school coach's recommendations to college coaches. Such provision of game film and recommendations was standard practice for any football player who sought to play college football and, indeed, was a credit to the Poly program. Instead, Foglietta told Doe "screw you," when Doe asked for access to game tapes to send to colleges.

18. Doe was severely depressed given his treatment by Foglietta and others. He was enraged and frightened by the culture of sexual abuse and its toleration. He told his parents about Foglietta's predatory pedophilia and hostile treatment because of his friendship with Moe. He implored his parents to withdraw him from the school. They refused to do so or take any other action. For Doe's parents and many other parents of modest immigrant backgrounds, Poly was a huge opportunity for social mobility and professional achievement.

19. Doe wanted to quit the football team but his parents refused to permit it, and indeed, Foglietta encouraged other members of the football team to beat up anyone who quit. Doe neglected his studies and spent much of his time in high school abusing alcohol and smoking marijuana with his friends from school. He felt like he was "not there" and felt unable to defend himself or to have any self-esteem. His grades suffered. The one area where he excelled, in athletics, was blocked by Foglietta and his enablers.

20. In his junior year of high school, Doe enrolled in a course on the Bible as Literature taught by Miller. Miller had multiple degrees from Harvard, Yale and Columbia including a Doctorate in Sacred Theology. On information and belief, Miller is deceased.

21. For the first time, a teacher at Poly gave positive feedback to Doe, reacted positively to comments Doe made in class and gave him good grades on his papers. For the first time at Poly, Doe was getting an “A” grade in a class. Doe believed based on the positive feedback from Miller that he had real talent for the humanities. Miller told Doe that he viewed him as having great insights and a “true soul.”

22. During the first trimester of junior year, Miller asked Doe to stay after class. Miller went up to Doe in the corner of the room, held him and pressed up against his torso and genitals. Doe was scared and mortified as he knew that Miller’s classroom was visible from a study hall and he was terrified that other students would see him. Doe was overwhelmed by fear and shame and began to cry. Miller kissed Doe and began licking Doe’s tears, further intensifying Doe’s fear that he would be seen and humiliated in front of his peers.

23. There were further incidents of groping in the classroom and Doe continued to be terrified that he would be found out. Doe was conflicted because he greatly appreciated the interest that Miller took in him when no other teacher did so and Miller’s insistence that he saw great talent that no one else saw. Yet Doe had no interest in sexual contact with Miller. He was 15 years old. He wondered if he was unwittingly giving off signals or inviting such contact and whether it was his own fault. He was filled with confusion, anxiety and self-loathing. He had suicidal thoughts as a way to make the pain and shame stop.

24. During senior year, Doe enrolled in another humanities course with Miller in Aesthetics/Philosophy. He was hoping that the sexual contact would end and he continued to

believe that he had ability in the humanities and that if he obtained a good grade it would help him given his poor record in other courses. Unfortunately, the rubbing and groping incidents continued on occasion, approximately five to six times, in the classroom. Again, Doe was terrified that he would be caught by fellow students and that he would be humiliated and terrorized by his peers given the rampant homophobia in the school.

25. Doe asked Miller for a recommendation for college; he had few other choices given his academic record. He had been accepted conditionally by one college, but needed an additional letter to show that he was continuing to improve his studies. Miller agreed to write a letter and invited Doe to the Yale Club for lunch to discuss his college plans. Once again, Doe was anxious and conflicted but agreed to go to the lunch as it was a public place and he had never been to a university club. After the lunch Miller invited him to visit his apartment which was on upper Park Avenue. Doe knew on some level that there was a problem with this but tried to deny it to himself.

26. At Miller's apartment, Miller made aggressive advances and tried to have oral sex with Doe. Miller stated that sex between them would be an activity of spirituality and religiosity. He told Doe that St. Thomas was Jesus's lover, and that such love was beautiful and divine, as distinguished from mere carnal love. Doe declined, made excuses and left the apartment. He was extremely disturbed by the incident.

27. Doe was 15 when these incidents began and 17 at the time of the incident at Miller's apartment. As is so often the case with sexual abuse, he told no one about the incident, including his wife or even his therapist, for more than 30 years. It was his painful, awful, ever-present secret. He grappled with shame and confusion; he questioned his sexuality; he was haunted by the fact that the first person that ever kissed him was Miller.

28. In approximately 2008, when other boys from his class started a website called White Tower Healing, Doe learned of the many other victims and that boys that he knew and liked had since committed suicide.

29. Doe finally told his wife, his therapist and ultimately posted an entry on the website. For years, Doe was hyper-protective of his children, would not allow them to engage in many activities, have sleepovers, go to camp or put them in situations where they were alone with adults when he was not there. He has remained angry, anxious, depressed and lacking in motivation and self-esteem. He has had difficulty in sustaining a career. He has had financial and professional issues throughout his life.

30. Doe was enraged at and traumatized by the culture of knowing tolerance and cover up of sexual abuse at Poly, the hostility of Foglietta, and Miller's taking advantage of him after serving as the one person who gave him encouragement and recognition. He remains enraged, shamed, distracted and damaged by the direct sexual abuse and the climate of toleration and retaliation at Poly during his crucial years of adolescence.

FIRST CAUSE OF ACTION

(NEGLIGENT HIRING/SUPERVISION/RETENTION/DIRECTION)

31. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

32. Defendant negligently hired and/or retained its employee, Miller, with knowledge of Miller's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

33. Defendant negligently placed its employee, Miller, in a position to cause foreseeable harm, which most probably would not have occurred had the employer taken reasonable care in the hiring of employees.

34. Defendant negligently hired and/or retained its employee, Miller, in a position to cause foreseeable harm, which Plaintiff would not have been subjected to, had Defendant taken reasonable care in supervising or retaining the employee, Miller.

35. Defendant knew or should have known of its employee Miller's propensity for the conduct that caused Plaintiff's injuries.

36. Defendant negligently failed to properly train and/or supervise its employee, Miller.

37. That as a result of the foregoing, Plaintiff was seriously and permanently injured.

38. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Defendant in the ownership, operation, management, maintenance, control, security and supervision of its employees.

39. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of the Defendant and/or its agents, servants, employees, without any negligence on the part of the Plaintiff contributing thereto.

40. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

SECOND CAUSE OF ACTION

(INADEQUATE SECURITY)

41. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

42. Defendant negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises.

43. Defendant negligently failed to provide adequate security to Plaintiff while Plaintiff was lawfully within the premises and while Defendant had knowledge of its employee Miller's propensity for the type of behavior which resulted in Plaintiff's injuries in this action.

44. Defendant negligently failed to safeguard Plaintiff, a child.

45. Defendant knew or should have known of its employee Miller's propensity for the conduct that caused Plaintiff's injuries and negligently failed to take reasonable measures to protect and provide security to the Plaintiff.

46. That as a result of the foregoing, Plaintiff was seriously and permanently injured.

47. That said occurrence and the resulting injuries to Plaintiff were caused solely and wholly by reason of the negligence and carelessness of Defendant in the ownership, operation, management, maintenance, control, security and supervision of the premises and employees within the premises.

48. That as a result of the foregoing, Plaintiff was injured solely and wholly as a result of the negligence, carelessness and recklessness of the Defendant without any negligence on the part of the Plaintiff contributing thereto.

49. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

THIRD CAUSE OF ACTION

(BREACH OF DUTY IN LOCO PARENTIS)

50. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

51. While Plaintiff was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendant and its employees, including Miller. During the times that Plaintiff was entrusted to Defendant and its employees, Miller was under the supervision and control of Defendant. Defendant owes - and owed - a duty to children entrusted to it to act *in loco parentis* and to prevent foreseeable injuries.

52. At all times material hereto, Defendant's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff.

53. As a direct result of the Defendant's breach of duty, Plaintiff has suffered the injuries and damages described herein.

54. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

FOURTH CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY)

55. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

56. While Plaintiff was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendant and its employees, including Miller. During the times that Plaintiff was entrusted to Defendant and its employees, Miller was under the supervision and control of Defendant.

57. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendant, this relationship is based on the entrustment of Plaintiff while he was a minor child to the care and supervision of Defendant and its employees, including Miller. This

entrustment of the Plaintiff to the care and supervision Defendant's employees, and exposure to Defendant's employee Miller, while Plaintiff was a minor child, required Defendant to assume a fiduciary relationship and to act in the best interests of Plaintiff and protect Plaintiff due to infancy and vulnerability.

58. Pursuant to their fiduciary relationship, Defendant was entrusted with the well-being, care, and safety of Plaintiff.

59. Pursuant to their fiduciary relationship, Defendant assumed a duty to act in the best interests of Plaintiff.

60. Defendant breached its fiduciary duties to Plaintiff.

61. At all times material hereto, Defendant's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff.

62. As a direct result of Defendant's breach of fiduciary duty, Plaintiff has suffered the injuries and damages described herein.

63. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

FIFTH CAUSE OF ACTION

(BREACH OF NON-DELEGABLE DUTY)

64. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

65. While Plaintiff was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendant and its employee, Miller, for the purposes of, *inter alia*, providing

Plaintiff with a safe environment in which to learn and grow. There existed a non-delegable duty of trust between Plaintiff and Defendant.

66. Plaintiff was a child, vulnerable and unprotected, and placed within the care of the Defendant. As a consequence, Defendant was in the best position to prevent Miller's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Miller's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

67. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of Defendant, Defendant breached its non-delegable duty to Plaintiff.

68. At all material times hereto, Miller was under the supervision, employ, direction and/or control of Defendant.

69. As a direct result of Defendant's breach of non-delegable duty, Plaintiff has suffered the injuries and damages described herein.

70. By reason of the foregoing, Defendant is liable to Plaintiff for compensatory damages and for punitive damages, together with interests and costs.

SIXTH CAUSE OF ACTION

(ASSAULT)

71. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

72. Between 1974 and 1976, Miller intentionally placed Plaintiff in apprehension of imminent harmful or offensive contact, to wit, sexual contact of the face, torso and genitals. Between 1974 and 1976, members of Defendant's administration and staff were fully aware and

tolerated the climate and culture of sexual abuse at Poly, involving Foglietta and others, and should have reasonably foreseen the harm that such abuse would cause to the children victims at Poly. As Judge Calabresi stated in the related case of intentional torts by drunken sailors, such an occurrence is “a completely foreseeable event, in the sense that it is a reasonably obvious risk of the general enterprise.” Just so at Poly where students, teachers and administrators were aware of and took no action to stop sexual abuse and indeed assured through threats and inaction that it would continue.

73. Defendant’s custom of deliberate indifference and tolerating sexual abuse played a direct role in the abuse Plaintiff suffered at the direction of Miller.

74. Defendant had a duty of care to all of its students, including Plaintiff, and violated this duty by taking no reasonable measure to ensure Plaintiff’s safety.

75. Defendant’s conduct caused Plaintiff to suffer damages, to be determined at trial.

SEVENTH CAUSE OF ACTION

(BATTERY)

76. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

77. Between 1974 and 1976, Miller intentionally made offensive bodily contact with Plaintiff, to wit, sexual contact of the face, torso and genitals.

78. Between 1974 and 1976, members of Defendant’s administration and staff were aware of the climate and culture of sexual abuse at Poly, and should have reasonably foreseen the harm that such abuse would cause to the children victims at Poly.

79. Defendant’s custom of deliberate indifference and tolerating sexual abuse played a direct role in the abuse Plaintiff suffered at the direction of Miller.

80. Defendant had a duty of care to all of its students, including Plaintiff, and violated this duty by taking no reasonable measure to ensure Plaintiff's safety.

81. Defendant's conduct caused Plaintiff to suffer damages, to be determined at trial.

EIGHTH CAUSE OF ACTION

(INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS)

82. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

83. Defendant acted intentionally and recklessly by tolerating and covering up outrageous conduct, to wit, sexual abuse.

84. Defendant's actions and failure to act directly caused Plaintiff severe emotional distress, which has lasted for over 40 years.

85. Defendant's conduct caused Plaintiff to suffer damages, to be determined at trial.

NINTH CAUSE OF ACTION

(NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS)

86. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if fully set forth herein.

87. Defendant owed a duty to Plaintiff, a young boy enrolled in Poly who was under its direct supervision and care.

88. Defendant's actions and lack thereof unreasonably endangered Plaintiff's physical safety and caused Plaintiff to fear for his own safety.

89. Defendant breached its duty of care to Plaintiff by tolerating and covering up outrageous conduct, to wit, sexual abuse.

90. Defendant's conduct caused Plaintiff to suffer damages, to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, as a result of the foregoing, Plaintiff prays for relief as follows:

- 1) Actual, incidental, and consequential damages from Defendant in an amount to be proven at trial;
- 2) Punitive damages;
- 3) Attorneys' fees and costs of suit from Defendant to the extent available by law; and
- 4) Any such additional and further relief, including equitable relief, the Court deems just and proper.

Dated: November 19, 2019
New York, New York

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